

## **FSA/NRCS Indiana Joint Decisions and Guidelines (August, 2008)**

### **Food Security Act of 1985, as Amended**

The following guidance and clarifications have been jointly agreed to by both FSA and NRCS in Indiana to improve timeliness in landowner requests for Wetland Conservation (WC) and Highly Erodible Land Conservation (HELC) determinations.

#### **Determinations**

1. All determinations (HELC, WC) will be made on a FSA CLU basis only.
2. When a determination is requested to *clear woody vegetation* to bring *new land* (i.e. – not cropped prior to December 23, 1985) into row-crop production, **both** a HELC and a WC determination will be completed.
  - a. Both items #9 and appropriate #10 will be checked as ‘Yes’ on the AD-1026.

NOTE: if new *non-wooded* land is being brought into production, only item #9 on the AD-1026 should be marked ‘Yes’ since only HEL will apply.

3. Determinations will only be made for activities that are likely to happen during the current crop year.
  - a. FSA and NRCS will jointly determine what is ‘likely to happen’ in consultation with the producer.
4. All determinations (HELC, WC) will be provided to producers on a CPA-026.
  - a. The latest CPA-026 associated with the CLU where the activity is proposed will remain as the official determination.
    - i. All previous determinations issued to producers on approved CPA-026s associated with the CLU (both HELC and WC) will be added to the latest CPA-026 (to ensure that producers have a complete record of all current determinations on the CLU).

#### **Certified vs. Non-Certified Determinations**

1. Any determination (certified or non-certified) issued on an approved CPA-026 is valid and applicable to the land in question.
  - a. Producers will check ‘No’ to #9 &/or #10 on page 2 of the AD-1026 if a CPA-026 exists (i.e. – the land in question *has been* evaluated by NRCS).

NOTE<sub>1</sub>: Producer benefits will not be withheld based on a non-certified determination.

NOTE<sub>2</sub>: Producers may request a certified determination of a previously-issued non-certified determination.

#### **Determining Crop History as of December 23, 1985**

1. FSA will determine if the land was converted from native vegetation, such as grassland, rangeland, or woodland, to agricultural production after December 23, 1985. (6-CP (Rev. 3), paragraph 17; and National Food Security Act Manual, Fourth Edition, 510.31).
  - a. Any current CLU designated as cropland when referred to NRCS is assumed to have met crop history requirements as of December 23, 1985.

## USDA Indiana Procedure

1. All producer requests will be initiated at the local FSA office.
2. The activities that the producer is proposing will be reviewed against the guidelines in this document.
  - a. If the new activity is found to not apply to the Food Security Act, or if a determination is already on file, the AD-1026 currently on file with the FSA office is sufficient and a new one is not needed.
3. If a determination is needed, the following process applies:
  - a. *Producers will be encouraged to check their farm records for any CPA-026s received and adhere to these instead of requesting a new determination.*
    1. Producers will be made aware that any new determinations will be made on the entire CLU and may result in changes to previous determinations.
  - b. FSA will check the CLU layer for any existing HELC determinations and the Wetland Point layer for any existing WC determinations.
    1. If the CLU has a determination on it, FSA will provide the producer a copy of the CPA-026 and *WC Definitions and Restrictions* (NFSAM 514.60) and *HELC Requirements* (512.01e) – specific questions will be referred to NRCS.
    2. If the CLU or Wetland Point layer does not have a determination documented, FSA will check their files for any undigitized CPA-026s.
      1. The CLU and Wetland Point layer will be updated with any newly-found determinations.
        - a. If the CLU has a determination on it, FSA will provide the producer a copy of the CPA-026 and *WC Definitions and Restrictions* (NFSAM 514.60) and *HELC Requirements* (512.01e) – specific questions will be referred to NRCS.
      2. If there is no CPA-026 in any FSA record, the producer will complete the form AD-1026 appropriately, and FSA will deliver the AD-1026 to NRCS.
        - a. For any AD-1026 or FSA-569, FSA will ensure that the cropland boundary as of December 23, 1985 is the same as the CLU boundary to date.
          - i. Anything that was not farmed as of December 23, 1985 but is delineated as cropland to date will be referred to NRCS on the form FSA-569.
  - c. NRCS will check their files for any undigitized CPA-026s.
    1. If there is an approved CPA-026 covering the CLU that was sent to the producer, NRCS will make a note on the AD-1026 accordingly, provide the producer a copy of the CPA-026 (along with the map of delineated areas and associated labels) and *WC Definitions and Restrictions* (NFSAM 514.60) and *HELC Requirements* (512.01e), and provide FSA with the CPA-026 and map.
      1. FSA will update the CLU and Wetland Point layer accordingly.
    2. If there is no CPA-026 in any NRCS record, NRCS will provide the determination on a CPA-026 (along with the map of delineated areas and associated labels) to both the producer and FSA.
4. FSA will notate all determinations electronically on the CLU layer.
5. FSA will update the Tract Records located in the web-based Farm Records system within 5 working days (1 calendar week) of receiving the CPA-026 from NRCS.

## **Time Lines** (NFSAM 510.12c).

NOTE: NRCS is currently addressing the backlog of determination requests throughout the state. The following time lines will be met by NRCS starting January 1, 2009.

1. FSA will refer all legitimate AD-1026 and FSA-569 requests to NRCS (with crop history as of December 23, 1985 determined) within 10 working days (2 calendar weeks) of producer signature.
2. NRCS will make all in-office determinations within 15 working days (3 calendar weeks), not including federal holidays, of receipt of the AD-1026 or FSA-569 from FSA
3. NRCS will make all on-site determinations within 60 working days (12 calendar weeks), not including federal holidays, of receipt of the AD-1026 or FSA-569 from FSA.

## **On-Site vs. Off-Site Determinations**

1. Off-site determination procedures will be used in the following cases:
  - a. Any WC determination setting covered by the approved Indiana Wetland Mapping Conventions (including non-cropped areas that meet the criteria as a small pocket and narrow band) and current policy amendments to the NFSAM.
    - i. Including producer-requested certified determinations of previously-issued non-certified determinations.
  - b. Any HELC determination that does not include PHEL soils.
2. On-site determination procedures will be used in the following cases:
  - a. Any WC determination setting not covered by the approved Indiana Wetland Mapping Conventions.
  - b. Any WC determination setting that cannot be determined using off-site procedures per the Indiana Wetland Mapping Conventions.
  - c. Any HELC determination that includes PHEL soils.

## **Narrow Linear Areas** (such as fence rows, ditch banks, etc.).

1. Only woody vegetation removal with the intent of increasing row crop acreage (as determined by FSA) will need a determination.
2. Single-line CLU boundaries through narrow linear areas assume the same WC and HELC label as the adjoining CLU(s) under the participant's control.
  - a. If a CPA-026 does not exist on the adjoining CLU(s), NRCS will complete a determination on the entire CLU(s) using the approved Indiana Wetland Mapping Conventions and current policy amendments to the NFSAM
    - i. NOTE: if a producer has control of the CLUs on both sides of the narrow wooded area and intends to combine the CLUs, both CLUs must have a determination completed.
3. Narrow linear areas that are delineated separately on the CLU from the adjoining crop CLU will be considered non-cropland as of December 23, 1985 and NRCS will complete a determination accordingly.

## Maintenance

1. The following are considered Maintenance and do not require a determination (producers should mark item #10C as 'Yes' on the AD-1026):
  - a. Removal of up to 20 ft. of woody vegetation (including stems and stumps) to install new **solid tile** through wooded areas to drain up-slope PC/NW.
  - b. Removal of up to 20 ft. of woody vegetation (including stems and stumps) to install new **solid tile** through wooded areas to maintain drainage as it existed on December 23, 1985 for up-slope FW/FWP, if the FW/FWP are not abandoned.
  - c. Removal of up to 20 ft. of woody vegetation (including stems and stumps) to maintain existing drainage as it existed on December 23, 1985 through wooded areas for up-slope PC/NW/FW/FWP.
  - d. Removal of up to 20 ft. of woody vegetation (including stems and stumps) adjacent to the top bank of "open agricultural ditches" as long as the intent is maintenance of the ditch and not to make production of agricultural commodities possible.
    - i. "Open agricultural ditches" are man made constructed ditches with spoil ditch banks and include natural watercourses that have been straightened and have spoil ditch banks.
  - e. Repairs of drainage systems to the extent they existed on December 23, 1985 on FW/FWP, if the FW/FWP is not abandoned.
2. Additional items not mentioned in #1 above may also qualify as maintenance based on joint FSA/NRCS concurrence at the local level as supported by producer documentation.
3. Items in direct conflict with #1 above will require a determination.

## Non Agricultural Determinations (Non Farm Loan Applicants)

1. Determinations will not be completed for **Non Farm Loan** participants when the purpose **is not for crop production**.
  - a. The following fall within this category:
    - i. Removal of woody vegetation for Fence Replacement/Repair
    - ii. Removal of woody vegetation for Fence Construction
    - iii. Removal of woody vegetation or manipulation of drainage for the construction of buildings, roads, ponds, etc.
  - b. Producers should mark item #10A and provide documentation of their plans for the project in item #11 of the AD-1026.
    - i. FSA will attach the '*USDA Indiana Activities Not for the Purpose of Row Crop Production*' to the AD-1026.
      1. Provide a copy to the producer
      2. File a copy.

## Reconstitutions and Re-Digitized CLUs

1. Notifying New Owners/Operators and Updating HELC Records:
  - a. National guidance/policy will be followed (6-CP paragraph 505; NFSAM 512.22)
    - i. The existing conservation plan or system in place when the original HELC determination was made (even if a prior landowner/operator) remains in effect until the current operator or owner requests and prepares a revised conservation plan. Conservation plans and systems will not be revised without the concurrence of the person(s).
2. NRCS will not complete HELC re-determinations in the following cases:
  - a. A new CRP practice is digitized as a separate CLU (CRP retains its cropland status and is not a permanent CLU).
    - i. The adjacent remaining CLUs retain the original CLU determination.
  - b. A CRP grass practice expires and will remain in grass (CRP grass retains its cropland status and is not a permanent CLU).
    - i. The adjacent remaining CLUs retain the original CLU determination.
  - c. A CRP practice (grass or trees) expires and will come back into production (CRP retains its cropland status and is not a permanent CLU).
    - i. The entire CLU retains the original CLU determination.
  - d. Two NHEL CLUs that when combined will equal less than 150 acres.
  - e. Other scenarios noted in policy (6-CP paragraph 501, 502, & 505; NFSAM 511.12a & 512.22).
    - i. For reconstitutions that involve the combination of a NHEL and a HEL CLU, FSA shall attribute the resulting CLU in GIS according to policy in 2-CP, paragraph 502H. Until the re-determination is completed by NRCS, FSA shall attribute the HEL status as Unknown. When the re-determination is returned from NRCS, if the resulting combined CLU contains both NHEL and HEL, FSA will attribute the HEL status as "H" and ensure that the comment field is recorded as:
      1. HEL-x;NHEL-y (where x & y are acreage numbers).
3. NRCS will complete HELC re-determinations in the following cases:
  - a. A CRP tree practice expires (= any CRP practice dominated by trees) and will remain in trees (trees lose their cropland status and are permanent CLUs).
  - b. Two NHEL CLUs that when combined will be greater than or equal to 150 acres.
  - c. Other scenarios noted in policy (6-CP paragraph 501, 502, & 505; NFSAM 511.12a & 512.22).

NOTE: FSA will refer HELC re-determination requests to NRCS using the form AD-1026.

## HELC Plan Requirements

1. Producers are not required to have a written plan to be considered in compliance with HELC requirements, unless specifically requested by the producer (6-CP paragraph 503).
  - a. A Producer's cropping system will be evaluated for compliance purposes during any Compliance Status Review.